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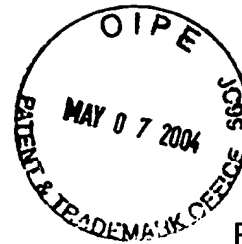
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on MAY 4, 2004 (Date of Deposit)

By Mark Watson

Signature

*Mark Watson*



PATENT  
Docket No.: FAN-052-00

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:  
Holland et al.

Entitled: SUPPORT STAND FOR HOLDING  
DISPLAY ITEMS

Serial No.: 08/992,504

Filing Date: December 17, 1997

: Group Art Unit: 3632

: Examiner: A. Wujciak

**AMENDED APPEAL BRIEF IN RESPONSE TO**  
**NOTICE OF NON-COMPLIANCE WITH 37 §CFR 1.192(C)**

Hon. Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

In response to the Notice of Non-Compliance with 37 §CFR 1.192(c) dated March 30<sup>th</sup>, 2004, the Appellants hereby provide an amended Appeal Brief and additional copies of the claim appendix.

**REMARKS**

The following discussion provides an amended Appeal Brief in response to the Notice of Non-Compliance with 37 §CFR 1.192(c) dated March 30<sup>th</sup>, 2004. It is believed that this amended Appeal Brief fully complies with the requirements under 37 §C.F.R 1.192(c).

### **REAL PARTY IN INTEREST**

The subject application is owned by Edward W. Holland and Marie L. Anderson of Newbury Park, California.

### **RELATED APPEALS AND INTERFERENCES**

This amended Appeal Brief is provided in response to a Notice of Non-Compliance with 37 §CFR 1.192(c) dated March 30<sup>th</sup>, 2003. The Notice of Non-Compliance was received in response to an amended Appeal Brief filed on July 12<sup>th</sup>, 2003. The Appeal Brief of July 12<sup>th</sup>, 2003 was filed in response to a Notice of Non-Compliance dated May 12<sup>th</sup>, 2003. The Notice of Non-Compliance dated May 12<sup>th</sup>, 2003 was received in response to a request to reinstate an Appeal under 37 C.F.R. § 1.193(b)(2) filed concurrently with an Appeal Brief on February 25<sup>th</sup>, 2003. The original appeal was filed in this case on September 3, 2002, and received by the USPTO on September 6, 2002. The Appellants hereby incorporate the entire contents of each of the prior Appeals by reference, as the Appellants feel that the majority of the arguments offered by the Examiner in this case were simply restated in the office action of November 19, 2002 rather than actually addressing new grounds of rejection.

### **STATUS OF CLAIMS**

Claims 75 through 94 represent all claims currently pending in the application. The rejection of claims 75-77, 81-82, and 86-93 are hereby appealed. The appealed claims are provided for reference in the attached Appeal Brief Appendix.

### **STATUS OF AMENDMENTS**

No amendments are currently pending.

## **SUMMARY OF THE INVENTION**

Appellants' invention is embodied in a support stand for holding flat or planar items in a vertical position. In general, as illustrated by Figure 1A and Figure 2, the support stand includes a flat, planar, rigid base 10, a pair of support members, 20 and 24, disposed on a top surface of the base, each support member having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base and opposed to each other. Further, a first support member 24 of the pair of support members, 20 and 24, is slidably engaged with the top surface of the base 10 such that the holding surface of the first support member can be slid toward or away from the holding surface of the second support member. In addition, the slidably engaged first support member 24 includes a securing apparatus 18 capable of releasably securing the first support member to the base 10 so as to prevent relative motion between that member and the base.

In another embodiment of the support stand, as illustrated by Figure 1A, the slidably engaged first support member 24 comprises an L-shaped bracket having a first leg and a second leg, with the first leg extending substantially perpendicular to the base 10 and having a face which forms the planar holding surface of the first support member, and the second leg having a face which is slidably engaged with the top surface of the base. In related embodiments, the second leg of the slidably engaged first support member 24 includes a slot 26 oriented so as to be substantially perpendicular to the face forming the planar holding surface of that support member. In one embodiment, a threaded pin 14 extends substantially perpendicular from the top surface of the base 10, with a distal end of the threaded pin extending through the slot of the support member 24. In this embodiment, a threaded knob 18 is threadably engaged with a distal end of the threaded pin 14. Consequently, when the threaded knob 18 is tightened, the second leg of the first support member 24 is compressed against the upper surface of the base 10, thereby preventing relative motion between the first support member and the base. Conversely, when the threaded knob 18 is loosened, relative motion between the support member 24 and the base 10 is possible.

In still another embodiment, the base 10 includes a second pin 12 protruding substantially perpendicular from the top surface of the base. This second pin 12 has a distal end that extends into the slot 26 of the first support member 24, thereby preventing rotation of the first support member about the threaded pin 14 while also serving to limit the linear travel of the first support member relative to the base 10. In related embodiments, the second support member 20 is substantially a mirror image of the first support member 24. Consequently, as described above for the first support member 24, in this embodiment, the second support member 20 is also slidably engaged with the base 10, and may include any of the embodiments described with relation to the first support member. Alternately, as illustrated by Figure 1A, the second support member 20 is permanently affixed to the base.

The foregoing description of the support stand is summarized from the description of the support stand beginning on Page 6, line 1 of the substitute specification provided as Amendment B, filed on June 26, 2000, and continuing through Page 8, line 19 of the substitute specification provided as Amendment B.

## **ISSUES**

The Appellants believe that the Examiner in this case has consistently and improperly delayed the Appellants attempts to Appeal from rejections advanced in the Examiner's final Office Action of April 5<sup>th</sup>, 2002. The Appellants believe that these delays have adversely prejudiced their rights to a fair prosecution on the merits of the subject patent application. Consequently, the Appellants have provided a summary of their attempts to Appeal from the Examiner's final Office Action of April 5<sup>th</sup>, 2002.

In particular, a final Office Action was originally received in this case on April 5<sup>th</sup>, 2002. Appellants appealed the final Office Action in an Appeal Brief dated September 3<sup>rd</sup>, 2002. In response, the Examiner withdrew his final rejections and reopened prosecution with a new non-final Office Action dated November 19, 2002. The

Examiner stated that ***new grounds of rejection*** are the basis for the new rejections provided in the Office Action of November 19, 2002.

In particular, in the Office Action of November 19, 2002, claims 75-77, 81-82, 86-87, and 92-93 were rejected under 35 U.S.C. §102(b) as being anticipated by ***Dumben*** (U.S. Patent Number 1,780,782). Next, claims 88 and 90-91 were rejected under 35 U.S.C. §103(a) as being unpatentable over ***Dumben***. Claim 89 was rejected under 35 U.S.C. §103(a) as being unpatentable over ***Dumben*** in view of ***Hunter*** (U.S. Patent Number 4,966,340).

However, in the Office Action of November 19<sup>th</sup>, 2002, the Examiner offered ***virtually the same rejections and arguments that had been offered in the previous final rejection of April 5<sup>th</sup>, 2002.*** Further, in each of the Appellants prior responses and in the Appeal Brief of September 3<sup>rd</sup>, 2002 the Appellants had identified a number of errors, erroneous characterizations, and inconsistencies with respect to the Examiner's prior final Office Action of April 5<sup>th</sup>, 2002. The Examiner failed to address these errors, erroneous characterizations, and inconsistencies in the Office Action of November 19<sup>th</sup>, 2002, and in fact, simply repeated the same errors, erroneous characterizations, and inconsistencies in that Office Action, which as noted above, simply repeated the same arguments offered in the original final Office Action of April 5<sup>th</sup>, 2002.

It is clear that under ***MPEP 1208.02*** (Reopening of Prosecution After Appeal) "the examiner may, with approval from the supervisory patent examiner, ***reopen prosecution to enter a new ground of rejection*** after appellant's brief or reply brief has been filed."

Because the new non-final Office Action of November 19<sup>th</sup>, 2002 ***failed to provide new grounds of rejection***, the Examiner ***not*** have reopened prosecution, and should instead have allowed the Appeal of September 3<sup>rd</sup>, 2002 to go forward rather

than reopening prosecution with essentially the same grounds of rejection that had been advanced in the original Final Office Action of April 5<sup>th</sup>, 2002.

Consequently, Appellants filed a Request for Reinstatement of Appeal and a supplemental Appeal Brief under 37 §CFR 1.193(b)(2) with the USPTO on February 25<sup>th</sup>, 2003 following the reopening of prosecution in the new non-final Office Action dated November 19, 2002.

In response, the Examiner replied on May 12<sup>th</sup>, 2003 with a Notice of Non-Compliance with 37 §CFR 1.192(c). The Examiner stated that the following deficiencies existed in the supplemental Appeal Brief of February 25<sup>th</sup>, 2003:

1. "A single ground of rejection has been applied to two or more claims in this application, and the brief includes the statement required by 37 §CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief."
2. "The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 §CFR 1.192(c)(9))."

In support of the first deficiency noted above, the Examiner stated that "[t]he applicant chose group 1 with claims 75-91 and group 2 with claims 92-94 to stand or fall together. Since the applicant chose group 1 and group 2 to stand or fall together, the applicant should only argue on the independent claim from each groups. In this brief, the applicant argues claims 75, 76, 77, 86, 88, 89-93 seperately [sic]."

The Appellants believe that each of the argued points with respect to each of the rejected claims have substantial bearing on this appeal, and should therefore be considered. Consequently, ***in an amended appeal brief filed July 12<sup>th</sup>, 2003***, rather than limit the argument to the independent claims, the Applicants amended the standing

of the claims with respect to which claims stand or fall together, so that each of the Examiners **separate** rejections could be considered in their entirety.

With respect to the second alleged deficiency noted above, it should be understood that the original Appeal of September 3, 2002 included an Appeal Brief Appendix containing a complete copy of the pending claims, in triplicate, which the Applicants **incorporated by reference** in the Supplemental Appeal Brief filed February 25<sup>th</sup>. This incorporation by reference is clearly allowed under MPEP 1208.02 which states:

***“The supplemental appeal brief must comply with the requirements of 37 CFR 1.192(c), but in doing so may incorporate by reference such parts of the previously-filed brief as may still be applicable.”***

Therefore, the Examiner’s second point regarding a copy of the claims appears to have been without merit. However, in an attempt to further the consideration of the Appeal, the Applicants again included another Appeal Brief Appendix containing a complete copy of the pending claims, in triplicate, with the amended Appeal Brief filed July 12<sup>th</sup>, 2003.

The Appellants then filed a Status Inquiry on October 1, 2003 regarding the current status of the Appeal since no response had been received by the Examiner within two months of the July 12<sup>th</sup> 2003 date of the amended Appeal Brief, as required under MPEP 1208, which states that “The examiner should furnish the appellant with a written statement in answer to the appellant's brief ***within 2 months after the receipt of the brief by the examiner.***”

In response, on November 19<sup>th</sup>, 2003, the Examiner finally responded to the amended Appeal Brief that had been filed on July 12<sup>th</sup>, 2003 with another Notice of Non-Compliance with 37 §CFR 1.192(c). However, this new Notice of Non-Compliance

appeared to be based on the **wrong Appeal Brief** as it cited material not included in the amended Appeal Brief of July 12<sup>th</sup>, 2003.

Consequently, Attorney for Appellants initiated a telephone conference with the Examiner on December 4, 2003. During that telephone conference with the Examiner (via the **Virginia Relay Service** which provides TTY service for the Examiner who is deaf), the Examiner **admitted that he had based his current Notice of Non-Compliance on the original Appeal Brief filed on September 3, 2002, rather than on the amended Appeal Brief filed on July 12<sup>th</sup>, 2003.** Subsequently, Attorney for Appellant and Examiner then agreed to continue their discussion via email, as it seemed that email communication would be more efficient than using the **Virginia Relay Service.**

Attorney for Appellants then requested via email on December 4<sup>th</sup>, 2003, that the erroneous Notice of Non-Compliance be vacated and that the Appeal Brief filed on July 12<sup>th</sup>, 2003 be taken up for review. The Examiner then responded via email on January 6<sup>th</sup>, 2004, by explaining that the Appeal Brief filed on July 12<sup>th</sup>, 2003 was defective and that a new Notice of Non-Compliance would be mailed immediately.

Attorney for Appellants then contacted the Examiner via email on February 6<sup>th</sup>, 2004, requesting status of the new Notice of Non-Compliance. Examiner responded via email February 11<sup>th</sup>, 2004, by explaining that **"You should get the letter from us anytime now."**

Appellants then waited another month for the promised Notice of Non-Compliance. However, nothing was received from the USPTO for this case during that period. Therefore, Attorney for Appellants then contacted the Examiner's Primary (Mr. Leslie A. Braun) via telephone on March 10<sup>th</sup>, 2004. Attorney for Appellants explained the recent history of the various Appeals filed in this case, and requested that assistance be provided in determining the status of the Appeal Brief filed July 12<sup>th</sup>, 2003.



The Examiner then responded with a new Notice of Non-Compliance dated **March 30<sup>th</sup>, 2004**. This new Notice of Non-Compliance was correctly directed to the Appeal Brief filed on July 12<sup>th</sup>, 2003. However, it should be noted that date this represents a period of **over eight months** between the filing of the Appeal Brief and a response from the Examiner that was actually directed to that Appeal Brief. Further, this date represents a period of almost **four months** from the time that the error in the Notice of Non-Compliance dated November 19<sup>th</sup>, 2003 was originally explained to the Examiner.

The current Notice of Non-Compliance, dated March 30<sup>th</sup>, 2004, objects to the Claim Appendix in that it included a copy of all pending claims rather than merely the claims being appealed. Appellants would like to point out that this particular circumstance existed in all of the previously filed Appeal Briefs (including the original Appeal Brief filed September 3, 2002). However, the status of the Claim Appendix was not objected to until the current Notice of Non-Compliance dated March 30<sup>th</sup>, 2004. Consequently, Appellants object to the apparent piecemeal evaluation of the prior Appeal Briefs which has had the effect of causing considerable delays, approaching two years, in allowing the Appeal Brief to be considered on its merits. Further, the inclusion of all pending claims in the original Claim Appendix should not have affected the validity of any of the Appellants arguments offered in the previously filed Appeal Briefs. However, in an effort to further the consideration of the current Appeal Brief, Appellants have included a new Claim Appendix, in triplicate, which lists only those claims on Appeal rather than all pending claims.

The current Notice of Non-Compliance, dated March 30<sup>th</sup>, 2004, also objects to the grouping of claims as including claims which have only been objected to rather than rejected. Consequently, Appellants have amended the Grouping of claims to exclude the claims which have been objected to.

The current Notice of Non-Compliance, dated March 30<sup>th</sup>, 2004, also states that **"each claim is only to be listed in one group."** However, the Appellants believe that

none of the claims were ever listed in more than one group in any of the previous Appeal Briefs in this case. Consequently, the Appellants do not understand why this objection is offered in the current Notice of Non-Compliance, dated March 30<sup>th</sup>, 2004.

The current Notice of Non-Compliance, dated March 30<sup>th</sup>, 2004, also indicates that each group should be argued as to how it is patentably distinct from each of the other groups. The current Notice of Non-Compliance, dated March 30<sup>th</sup>, 2004, then suggests that to "argue the patentability of each claim within its own group over the other claims within the same group is not within the spirit of all the claims within the same group standing or falling together.

However, the Appellants do not believe that they have argued the patentability of each claim within its own group over the other claims within the same group in any of the prior Appeal Briefs. Further, with respect to arguing how each group is patentably distinct from each of the other groups, it should be noted that this is not required where the Examiner has offered **separate rejections** for particular claims.

In particular, it should be noted that in the Office Action dated November 19<sup>th</sup>, 2002, which is the basis for the current Appeal, the Examiner provided a single paragraph rejecting claims 75-77, 81-82, 86-87 under U.S.C. §102(b). However, in this paragraph, the Examiner **separately** argued individual elements of dependent claim 76, **separately** argued individual elements of dependent claim 82, and **separately** argued individual elements of dependent claim 86 as being described by the cited reference. Similarly, claims 92-93 were also the subject of a **separate** rejection under U.S.C. §102(b). Consequently, the Appellants are within their legal rights to separately argue the patentability of dependant claims in an Appeal Brief where the Examiner has advanced **separate arguments** for their rejection without the need to argue how each group of claims is patentable over each other group.

Specifically, the U.S. Court of Appeals for the Federal Circuit, held in the case of *In Re C. Steven McDaniel, et al.*, Docket No. 01-1307, Decided 19 June 2002 , that "37

***C.F.R. §1.192(c)(7) does not give the Board carte blanche to ignore the distinctions between separate grounds of rejection and to select the broadest claim rejected on one ground as a representative of a separate group of claims subject to a different ground of rejection. The applicant has the right to have each of the grounds of rejection relied on by the Examiner reviewed independently by the Board*** under 35 U.S.C. §6(b) (providing that '[t]he Board of Patent Appeals and Interferences shall... review adverse decisions of examiners upon applications for patents') (emphasis added). Simplification and expedition of appeals cannot justify the Board's conflating separately stated grounds of rejection by selecting, for the purpose of deciding an appeal as to one ground of rejection, a representative claim which is not itself subject to that ground of rejection. ***37 C.F.R. §1.192(c)(7) does not override an applicant's right under the statute to have each contested ground of rejection by an examiner reviewed and measured against the scope of at least one claim within the group of claims subject to that ground of rejection.***" (emphasis added)

Consequently, the Appellants believe that the previously offered claim groupings, less the objected to claims, are completely valid in view of the applicable law.

### **GROUPING OF CLAIMS**

- Group I:** Claims 75, 77, 81, and 88-91 stand or fall together.
- Group II:** Claim 76 stands or falls alone.
- Group III:** Claim 82 stands or falls alone.
- Group IV:** Claims 86-87 stand or fall together.
- Group V:** Claims 92-93 stand or fall together.

Note that this grouping of claims is believed to fully comply with the requirements of 37 §CFR 1.192(c). However, in the Notice of Non-Compliance dated March 30<sup>th</sup>, 2004, the Examiner again objects to arguing the patentability of dependent claims. In particular, the Examiner suggests that "each claim is only to be listed in one group."

Again, the Appellants would like to point out that each claim was never listed in more than one group in any of the previous Appeal Briefs in this case. The Examiner further suggests that only the broadest claim in each group need be argued. However, ***because the patentability of several of the claims is argued separately by the Examiner, in order to fully address the Examiner's rejections, the Appellants have provided the above amended claim groupings with corresponding arguments.***

Note that these amended claim groupings are similar to the groupings provided in the Appeal Brief filed July 12<sup>th</sup>, 2003, with the exception that several dependent claims which had merely been objected to by the Examiner have been removed from the above-listed groupings.

### **THE EXAMINER'S RATIONALE**

The Examiner's rationale for the rejection of claims 75-77, 81-82, 86-87 under 35 U.S.C. §102(b) as being anticipated by ***Dumben*** was stated in the Office Action of November 19, 2002 as follows:

"Dumben teaches a support stand (figure 2) comprising a flat planar rigid base (5) and a pair of support members (17) disposed on a top surface of the base. Each support member having a single, planar holding surface (figure 2, a). The support members are substantially perpendicular to the top surface of the base. The support members are slidably engaged (16) with the top surface of the base. A securing apparatus (12, 19) capable of releasably securing the support members (17). The second support member (other support member transverse from the first support member) is permanently affixed to the base (figure 2) and slidably engaged with the top surface of the base. The support members comprise an L-shaped bracket wherein a first leg (17) of bracket extends substantially perpendicular to the base and having a face forms the planar holding surface. A second leg (16) of bracket has a face, which is slidably engaged with the top surface of base. The base has bottom surface (6),

which is in contact with the ground and prevent a display from tipping over. The top and bottom surfaces are in elongated rectangular-shapes. The surfaces are perpendicular to the support members (figure 2)."

Note that the above cited argument includes **separate** characterizations and arguments relating to individual elements of dependent claim 76, **separate** characterizations and arguments relating individual elements of dependent claim 82, and **separate** characterizations and arguments relating individual elements of dependent claim 86. Consequently, Appellants have separately responded to those arguments as allowed by law.

The Examiner's further rationale for the rejection of claims 92 and 93 under 35 U.S.C. §102(b), as being anticipated by **Dumben**, was stated in the Office Action of November 19, 2002 as follows:

"In regard to claims 92 and 93, the support member is disposed on a top surface of the base having a single planar holding surface. The support member is slidable inward or outward on the base. The stand comprises a first securing apparatus 19 capable of releasably securing the support member to the base so as to prevent relative motion between the member and the base, and a second securing member (the other support member, 17, is a securing member for supporting an item when the single member is pressing against the item from the other side) for attaching the support member to an item placed against the planar holding face of the support member."

The Examiner's rationale for the rejection of claim 88 under 35 U.S.C. §103(a), as being unpatentable over **Dumben**, was stated in the Office Action of November 19, 2002 as follows:

"In regards to claim 88, Dumben teaches the top and bottom surfaces of the base but fails to teach they are in a square shape. It would have been obvious to the designer's choice to have modified the elongated rectangular to a square shape to provide an ornament appearance. Appellant has asserted no unexpected criticality in making the base square shaped."

The Examiner's rationale for the rejection of claims 90-91 under 35 U.S.C. §103(a), as being unpatentable over **Dumben**, was stated in the Office Action of November 19, 2002 as follows:

"In regard to claim 90-91, Dumben teaches the base and support members being made of metal (col.1, line 33-40) but fails to teach they are coated with a rust-resistant plating material. It would have been obvious to the designer's choice to have added the rust-resistant plating material to the base and support members to prevent the corrosion of rust. Appellant has asserted no unexpected criticality in making the use of rust resistant coating."

The Examiner's rationale for the rejection of claim 89 under 35 U.S.C. §103(a), as being unpatentable over **Dumben** in view of **Hunter**, was stated in the Office Action of November 19, 2002 as follows:

"Dumben teaches the base but fails to teach the base having at least two wheels. Hunter teaches base (40) having at least two wheels (30). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added Dumben base with wheels as taught by Hunter to provide a convenience in moving the base of Dumben from one location to another."

Finally, in the Office Action of November 19, 2002, the Examiner indicated that claims 78-80, 83-85 and 94 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

## **ARGUMENT**

By way of introduction to the following discussion, the Appellant's respectfully contend that rather than providing new grounds of rejection in the Office Action of November 19, 2002, the Examiner has simply restated the same arguments provided in support of the original rejections offered in the Office Actions of June 19, 2001, and April 15, 2002. Consequently, the arguments filed by the Appellant on October 18, 2001, the arguments filed by the Appellant on September 3, 2002 in the aforementioned Appeal, and the arguments filed by the Appellant on July 12<sup>th</sup>, 2003 in the aforementioned Appeal, in response to the various aforementioned Office Actions and Notices of Non-Compliance, again apply to the "new grounds of rejection" offered by the Examiner in the new Office Action of November 19, 2002. However, for purposes of clarity, the same arguments will again be addressed fully in this newly amended Appeal Brief.

### **I. The 35 U.S.C. §102(b), Rejection of Claim 75 (Relative to Claims of Group I):**

In the current Office Action, the Examiner again contends that ***Dumben*** describes all of the claimed elements of the Appellants' invention. However, as noted in each of the previously filed Appeal Briefs, and in accordance with the following discussion, the Appellants contend that the Examiner has incorrectly characterized several portions of the ***Dumben*** reference in an attempt to show equivalence to elements of the Appellants support stand.

Note that the Examiner addresses his rejection of claims 75 and 92 in a combined argument, which ***separately*** addresses particular elements of claim 92 not included in claim 75; however, so as to not argue independent claims 75 and 92, which

are grouped separately, in a combined argument, the Appellants will repeat the arguments provided below with respect to independent claim 92, and further include a response to the Examiner's additional arguments regarding claim 92. In particular, with respect to the rejection of independent claim 75, the Examiner again first suggests that "Dumben teaches a support stand (figure 2) comprising a flat planar rigid base (5)..." Further, in the Examiner's response to the Appellants' appeal filed on September 3, 2002, the Examiner states: "The examiner believes that on figure 1 in Dumben, the invention shows that the top surface the base is a flat or planar surface. The flat surface on the base allows the support member(s) to slide along the top surface of the base. If the surface on the base were not flat, it would be impossible to move the supporting member."

However, as noted by the Appellants in the response to the each of the two previous Office Actions, the **Dumben** base (5), as illustrated by figures 2-6, is neither flat, nor planar. In fact, as described by **Dumben** page 1, lines 60-65, the **Dumben** base is actually a hollow housing having supporting legs (6) (see also figures 2-3). While the **upper surface** of the **Dumben** base (5) is clearly flat as suggested by the Examiner, the base itself, having supporting legs (6) in each corner, is not itself flat and planar. In fact, one of the stated advantages of the Appellants support stand, as discussed on page 3, line 17-19 of the substitute specification provided as Amendment B, is that the Appellants support stand has a "continuous ground engaging flat base... to hold a flat display item, while remaining unobtrusive, low to the ground, and presenting no trip hazard to foot traffic." Clearly, the **Dumben** base (5) having legs (6) extending from each corner of the base is neither flat nor planar. Consequently, because of the **Dumben** supporting legs (6), the **Dumben** base (5) is **incapable** of achieving one of the stated advantages of the Appellants support stand, namely, the ability to provide a **continuous ground engaging flat base** which does not present a trip hazard to foot traffic.

Next, the examiner suggests that **Dumben** includes "a pair of support members (17) disposed on a top surface of the base." Further, in the Examiner's response to the



Appellants' appeal filed on September 3, 2002, the Examiner states the following: "The examiner believes that on Figure 7 in *Dumben*, the invention shows that the support member is disposed on the top surface of the base. The supper [sic] member has a planar surface **with four edges, the two edges on the bottom of the planar surface are resting on the base as shown in figure 7**. Both edges provide a stable support for the support member from wobbling when changing the location of the support member." (emphasis added)

As noted above, the Examiner suggests that the "supper [sic] member has **four edges**, the two edges on the bottom of the planar surface are resting on the base as shown in figure 7" (emphasis added). It is unclear exactly what the "supper member" is that is being referred to by the Examiner. Nevertheless, for the sake of argument, it will be assumed that the Examiner is referring to one of the *Dumben* "book ends" (17) as illustrated by figure 7 of the *Dumben* reference. However, it should be noted that *Webster's Encyclopedic Unabridged Dictionary of the English Language*, 2001, Thunder Bay Press, defines "edge" as "**a line or border at which a surface terminates**." Consequently, as **clearly** illustrated by figure 7, the *Dumben* "book end" (17) has more than four edges.

In fact, it is clear that the bottom section of the *Dumben* "book end" (17) has a center section that extends **into** the base (5) and is in contact with block (16). Clearly, in view of figure 7, the bottom portion of the *Dumben* "book end" (17) has **five** separate planar surfaces, and thus a plurality of "edges." In particular, from right to left, the *Dumben* "book end" (17) shows: 1) a first flat area above the top of the base (5); 2) a second small area at a right angle to the first area, and extending down into the base; 3) a third flat area at a right angle to the second flat area, and disposed within the slot (8) of the base (5); 4) a fourth small area at a right angle to the third area, and extending from the third area towards the top of the base; and 5) a fifth flat area extending from, and at a right angle to the fourth flat area, above the top of the base (5). Consequently, because just the bottom of the *Dumben* "book end" (17) has five separate planar surfaces connected at right angles, and because the *Dumben* "book end" (17) is a

three-dimensional structure, the bottom section of the **Dumben** “book end” (17) has **at least 16 edges**.

Therefore, in view of the above discussion, the Examiner’s statement that “**the two edges on the bottom of the planar surface are resting on the base as shown in figure 7**” is unclear on its face.

However, regardless of the Examiner’s apparent misuse of the term “edges,” and in contrast to the position advanced by the Examiner, the Appellants again contend that the **Dumben** “book ends” (17) are not in fact disposed on a top surface of the base, as described and claimed by the Appellants. In particular, as clearly illustrated by figures 1, 3, 4, 5, 6 and 7 of the **Dumben** reference, and as repeatedly explained by the Appellants, the pair of “book ends” (17) are **not** disposed on the top surface of the base, as described and claimed by the present invention. In fact, as illustrated by figures 1, 3, 4, 5, 6, and 7, and as explained on page 2, lines 5-22 of the **Dumben** reference, the **Dumben** book ends (17) are actually coupled to and supported by blocks (16) that are slidably mounted within a longitudinal slot (8) in the base (5). These blocks (16) are in turn coupled to guide pieces (12) that are disposed on the **lower surface** of the base (5).

In contrast, at least one of the Appellants support members, 20 and 24, has a “flat planar surface to communicate with base plate 10.” Further, “support 24 **lies flat on top of base plate 10...**” (emphasis added) as described on page 6, lines 12-18 of the substitute specification provided as Amendment B. In addition, also unlike the **Dumben** book ends (17), the Appellants support members, 20 and 24, do **not** extend **into** the base as illustrated by figure 7 of the **Dumben** reference.

Therefore, in view of the preceding discussion, it is clear that **Dumben** fails to teach the Appellants claimed “pair of support members **disposed on a top surface of the base**” (emphasis added) as described and claimed by the Appellants.

Next, the examiner suggests that the **Dumben** “support members are slidably engaged (16) with the top surface of the base.”

However, in contrast to the position advanced by the Examiner, the Appellants again contend that the **Dumben** reference clearly shows in figures 1 and 3-7 that the book ends (17) are supported by **blocks (16)** which are themselves slidably engaged **within a longitudinal slot (8)** in the base (5), see **Dumben** page 2, lines 5-10. Further, the **Dumben** blocks (16) are not slidably engaged with the surface of the base (5), as they are clearly disposed within the longitudinal slot (8) in the base as illustrated by figures 4, 5 and 6. In addition, as illustrated by figure 7, a portion of the **Dumben** book ends (17) actually extends **into** the slot (8) in the base (5). Consequently, it is clear that the **Dumben** book ends (17) are coupled to “slidable blocks” (16) which are in turn **slidably disposed within a slot (8) in the base (5)**. In contrast, at least one support of the present invention is clearly “**slidably engaged with the top surface of the base,**” and **not** within a slot within the base as described by **Dumben**.

Next, the examiner suggests that **Dumben** teaches that a “securing apparatus (12, 19) is capable of releasably securing the support members” (emphasis added). Further, in the Office Action dated November 19, 2002, the examiner responded to the Appellants arguments filed on September 3, 2002 by stating:

“on pages 9-11, the applicant argues that Dumben screws 19 do not prevent relative motion between the base and the book ends. The screw (19) in Dumben’s invention shows that the screw keeps the bookends within the base when changing the location of the book ends. **The bookends would not slide out of the base when moving the ends. The examiner believes that if the screw (19) are screwed tighten against the sliding block (12), it would prevent the book ends from sliding.**” (emphasis added)

As noted above, the Examiner states that **Dumben** teaches that a “securing apparatus (12, 19) is capable of releasably securing the support members (17),” However, as explained by the Appellants in the prior Appeal Briefs filed September 3, 2002, and July 12, 2003, it is clear from a reading of the **Dumben** reference that elements (19) of **Dumben** are actually screws which are “employed for securing the slidable blocks 16 and the slidable floating member 12 to the bracing members 18 which may be secured to the book end supports 17...” (See **Dumben** page 2, lines 15-18). Clearly, the **Dumben** screws are **not** used in the manner suggested by the Office Action.

In particular, the **Dumben** screws (19) simply hold together elements that are slidably disposed within and under the slot (8). Further, while it appears that such screws releasably secure the slidable blocks (16) and the slidable floating member (12) to the bracing members (18), it should be noted that apparent effect of removing these screws (19) would be to cause each bracing member (18) to become unsecured from its support structure, thereby reducing any lateral support of the book ends (17). Clearly, the **Dumben** screws (19) do not operate as suggested by the Office Action, as they simply do **not** prevent relative motion between the base (5) and the book ends (17). Further, as clearly illustrated by figures 4, 5 and 6, the **Dumben** screws (19) already appear to be tightened as much as they can be without the heads of those screws actually extending **into** the surface of the slidable floating member (12). Thus, the Appellants strongly disagree with the Examiner’s suggestion that tightening the **Dumben** screws (19) “**would prevent the book ends from sliding.**” (emphasis added).

In stark contrast, as claimed by independent claim 75, the Appellants describe a “securing apparatus capable of releasably securing the support member to the base **so as to prevent relative motion between that member and the base**” (emphasis added). The Appellants securing apparatus prevents **any** relative motion between the support member and the base, while the **Dumben** screws (19) in combination with the **Dumben** slidable floating member (12) serve only to provide a support structure for the

**Dumben** book ends (17) as described above. Clearly, the **Dumben** reference does not teach the Appellants securing apparatus.

In view of the preceding discussion, it is clear the apparatus described by the **Dumben** reference does not teach the Appellants claimed invention. In fact, the Appellants have pointed out a number of apparent inconsistencies and erroneous characterizations of the elements of the **Dumben** reference which in themselves should render the rejections under 35 U.S.C. §102(b) invalid.

Consequently, in view of the foregoing argument, it is the Appellant's position that rejected independent claim 75, and dependent claims 76-77, 81-82, and 86-87, are not described by the **Dumben** reference, and as such are patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of independent claim 75, i.e.,

Claim 75: A support stand, comprising:

**"a flat, planar, rigid base;**

a pair of **support members disposed on a top surface of the base**, each support member having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base and opposed to each other, and wherein a first of the pair of support members is **slidably engaged with the top surface of the base** such that the holding surface of the first support member can be slid toward or away from the holding surface of the second support member; and

a **securing apparatus capable of releasably securing the first support member to the base so as to prevent relative motion between that member and the base.**" (emphasis added)

As such, the Appellants respectfully traverse the Examiner's rejection of the claims of **Group I**, i.e., independent claim 75, and dependent claims 77, 81, and 88-91 under 35 U.S.C. §102(b) in view of the **Dumben** reference.

Further, with respect to the Examiners **separate rejections** of claims 88 and 90-91 under 35 U.S.C. §103(a), as being unpatentable over **Dumben**, it should be noted that claims 88 and 90-91 are dependent from independent claim 75. The Office Action has made no suggestion that independent claim 75 is unpatentable under 35 U.S.C. §103(a). Further, in accordance with the preceding discussion, it is clear that **Dumben** fails to teach a number of the elements of claim 75, and that in fact, claim 75 of the Appellants invention has been shown to be allowable under 35 U.S.C. §102(b). Consequently, as there is no valid outstanding rejection of the parent claim, any rejection of the dependent claim is moot. Therefore, the Appellants respectfully traverse the Examiner's rejection of claims 88 and 90-91 under 35 U.S.C. §103(a) in view of the above discussion.

Similarly, with respect to the Examiners **separate rejection** of claim 89 under 35 U.S.C. §103(a), as being unpatentable over **Dumben** in view of **Hunter**, it should be noted that claim 89 is also dependent from independent claim 75. The Office Action has made no suggestion that independent claim 75 is unpatentable under 35 U.S.C. §103(a). Further, in accordance with the preceding discussion, it is clear that **Dumben** fails to teach a number of the elements of claim 75, and that in fact, claim 75 of the Appellants invention has been shown to be allowable under 35 U.S.C. §102(b). Consequently, as there is no valid outstanding rejection of the parent claim, any rejection of the dependent claim is moot. Therefore, the Appellants respectfully traverse the Examiner's rejection of claims 89 under 35 U.S.C. §103(a) in view of the above discussion.

## **II. The 35 U.S.C. §102(b), rejection of claim 76 (Relative to Claim of Group II):**

With apparent reference to claim 76, the Examiner simply states that the "second support member... is permanently affixed to the base (figure 2) and slidably engaged with the top surface of the base." This **separate argument** offered by the Examiner is addressed below by the Appellants. Further, in the Office Action dated November 19,

2002, the examiner responded to the Appellants arguments filed on September 3, 2002 by stating:

“In regards to the applicant’s argument on page 11, the applicant argues that Dumben does not teach the second support member being permanently affixed to the base and slidably engages with the surface of the base. On figure 7 of Dumben’s invention shows the slidable floating block (12) secures the second support member within and on the base. The slidable floating block is connected to a slidable block (16), which allows the support member to slide along the top surface of the base. The examiner believes that Dumben teaches the second support member being permanently affixed to the base and slidably engages with the surface of the base.”

However, in stark contrast to the position advanced by the Examiner, and as repeatedly explained by the Appellants, the common usage of the term “permanently affixed” negates the possibility that an object is also simultaneously “slidably engaged.” Specifically, the Appellants contend that an object can be either “permanently affixed,” or “slidably engaged,” but not both at the same time. Further, it is clear from figure 1 and figures 3-6 of the ***Dumben*** reference, as well as from the text of the ***Dumben*** reference that the ***Dumben*** book ends (17) are adjustable along the length of the slot (8) in the base (5), and that neither book end is permanently affixed to the base.

Further, because the claims must be interpreted in light of the Appellants’ specification, it is clear that the “permanently affixed” and “slidably engaged” states are **mutually exclusive embodiments** of the Appellants support stand. In particular, as illustrated by figure 1A, and described on page 6, lines 8-11 of the substitute specification provided as Amendment B, the permanently affixed support 20 is permanently attached to the base 10 and supported by a support rod 22 which is **welded** to both the base and the support. Clearly, this support 20 is **permanently affixed** to the base 10 while being **incapable** of slidable engagement with the base.

Conversely, in an **alternate embodiment**, as illustrated by figure 2, and described on page 7, lines 12-13 of the substitute specification provided as Amendment B, both supports, 20 and 24, are in slidable “non-fixed” engagement with the base 10.

Consequently, the Appellants respectfully suggest that the Examiner’s characterization of the **Dumben** reference is in error. Clearly, because the **Dumben** book ends (17) are adjustable along the length of the slot (8) in the base (5), neither book end is permanently affixed to the base. Therefore, the **Dumben** reference clearly fails to teach that “the second support member is permanently affixed to the base” as described and claimed by the Appellants in claim 76.

In view of the preceding discussion, it is clear the apparatus described by the **Dumben** reference does not teach the Appellants claimed invention. In fact, the Appellants have pointed out a number of apparent inconsistencies and erroneous characterizations of the elements of the **Dumben** reference which in themselves should render the rejection under 35 U.S.C. §102(b) invalid.

Consequently, in view of the foregoing argument, it is the Appellant’s position that the rejected claim 76 is not described by the **Dumben** reference, and as such is patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of dependent claim 76, i.e.,

Claim 76: The support stand of Claim 75, wherein the second support member is **permanently affixed to the base**. (emphasis added)

As such, the Appellants respectfully traverse the Examiner’s rejection of the claim of **Group II**, i.e., dependent claim 76, under 35 U.S.C. §102(b) in view of the **Dumben** reference.



### **III. The 35 U.S.C. §102(b), rejection of claim 82 (Relative to Claim of Group III):**

With apparent reference to claim 82, the Examiner suggests that a “second leg (16) of bracket has a face, which is slidably engaged with the top surface of base” (emphasis added). This ***separate argument*** offered by the Examiner is addressed below by the Appellants.

As illustrated by figures 1, 4, 5, 6 and 7 of the ***Dumben*** reference, and as explained on page 2, lines 5-22 of the ***Dumben*** reference, the ***Dumben*** book ends (17) are actually coupled to and supported by ***blocks (16)*** that are slidably mounted ***within a longitudinal slot (8) in the base (5)***. These blocks (16) are in turn coupled to guide pieces (12) that are disposed on the ***lower surface*** of the base (5). Therefore, it is clear that the slidable blocks (16) are ***not*** a second leg of the bracket, and that the slidable blocks (16) do ***not*** have a face that is “slidably engaged with the top surface of base” as suggested by the Examiner. Consequently, the Appellants respectfully suggest that the Examiner’s characterization of element 16 of the ***Dumben*** reference is in error.

In view of the preceding discussion, it is clear the apparatus described by the ***Dumben*** reference does not teach the Appellants claimed invention. In fact, the Appellants have pointed out a number of apparent inconsistencies and erroneous characterizations of the elements of the ***Dumben*** reference which in themselves should render the rejection under 35 U.S.C. §102(b) invalid.

Consequently, in view of the foregoing argument, it is the Appellant’s position that the rejected claim 82 is not described by the ***Dumben*** reference, and as such is patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of dependent claim 82, i.e.,

Claim 82: The support stand of Claim 81, wherein the second support member comprises an L-shaped bracket, a first leg of which extends

substantially perpendicular to the base and has a face which forms the planar holding surface of the second support member, and ***a second leg of which has a face which is slidably engaged with the top surface of the base.*** (emphasis added)

As such, the Appellants respectfully traverse the Examiner's rejection of the claim of **Group III**, i.e., dependent claim 82, under 35 U.S.C. §102(b) in view of the ***Dumben*** reference.

#### **IV. The 35 U.S.C. §102(b), rejection of claim 86 (Relative to Claims of Group IV).**

With apparent reference to claim 86, the Examiner suggests that "[t]he base has bottom surface (6), which is in contact with the ground and prevent a display from tipping over."

However, as discussed above, and as previously explained by the Appellants, element (6) of the ***Dumben*** reference actually comprises a set of four legs, with one leg extending from each corner of the bottom surface of the base (5). Consequently, while the base (5) clearly has a bottom surface, it is ***not*** in contact with the ground to "prevent a display from tipping over." Rather, it is the legs (6) which extend from the bottom of the base (5) which are in contact with the ground. Therefore, it is clear that ***Dumben*** does not teach that a base is in contact with the ground as described and claimed by the Appellants.

Consequently, in view of the foregoing argument, it is the Appellant's position that the rejected claim 86 is not described by the ***Dumben*** reference, and as such is patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of dependent claim 86, i.e.,

Claim 86: The support stand of Claim 75, ***wherein the base has a bottom surface which is in contact with the ground or floor***, and wherein the base is

of sufficient size and shape so that whenever a display item is held in an upright position between the planar holding surfaces of the support members, it is ***prevented from tipping over.***” (emphasis added)

As such, the Appellants respectfully traverse the Examiner's rejection of the claims of **Group IV**, i.e., dependent claims 86 and further dependent claim 87, under 35 U.S.C. §102(b) in view of the ***Dumben*** reference.

**V. The 35 U.S.C. §102(b), rejection of claim 92 (Relative to Claims of Group V):**

In the current Office Action, the Examiner again contends that ***Dumben*** describes all of the claimed elements of the Appellants' invention. However, as noted in each of the previously filed Appeal Briefs, and in accordance with the following discussion, the Appellants contend that the Examiner has incorrectly characterized several portions of the ***Dumben*** reference in an attempt to show equivalence to elements of the Appellants support stand.

As noted above, the Examiner addresses his rejection of claims 75 and 92 in a combined argument, which ***separately*** addresses particular elements of claim 92 not included in claim 75; however, so as to not argue independent claims 75 and 92, which are grouped separately, in a combined argument, the Appellants have repeated the arguments provided above with respect to independent claim 75, and ***further included an additional response to the Examiner's additional arguments regarding claim 92.***

In particular, with respect to the rejection of independent claim 92, the Examiner again first suggests that “Dumben teaches a support stand (figure 2) comprising a flat planar rigid base (5)...” Further, in the Examiner's response to the Appellants' appeal filed on September 3, 2002, the Examiner states: “The examiner believes that on figure 1 in Dumben, the invention shows that the top surface the base is a flat or planar surface. The flat surface on the base allows the support member(s) to slide along the

top surface of the base. If the surface on the base were not flat, it would be impossible to move the supporting member."

However, as noted by the Appellants in the response to the each of the two previous Office Actions, the **Dumben** base (5), as illustrated by figures 2-6, is neither flat, nor planar. In fact, as described by **Dumben** page 1, lines 60-65, the **Dumben** base is actually a hollow housing having supporting legs (6) (see also figures 2-3). While the **upper surface** of the **Dumben** base (5) is clearly flat as suggested by the Examiner, the base itself, having supporting legs (6) in each corner, is not itself flat and planar. In fact, one of the stated advantages of the Appellants support stand, as discussed on page 3, line 17-19 of the substitute specification provided as Amendment B, is that the Appellants support stand has a "continuous ground engaging flat base... to hold a flat display item, while remaining unobtrusive, low to the ground, and presenting no trip hazard to foot traffic." Clearly, the **Dumben** base (5) having legs (6) extending from each corner of the base is neither flat nor planar. Consequently, because of the **Dumben** supporting legs (6), the **Dumben** base (5) is **incapable** of achieving one of the stated advantages of the Appellants support stand, namely, the ability to provide a **continuous ground engaging flat base** which does not present a trip hazard to foot traffic.

Next, the examiner suggests that **Dumben** includes "a pair of support members (17) disposed on a top surface of the base." Further, in the Examiner's response to the Appellants' appeal filed on September 3, 2002, the Examiner states the following: "The examiner believes that on Figure 7 in Dumben, the invention shows that the support member is disposed on the top surface of the base. The supper [sic] member has a planar surface **with four edges, the two edges on the bottom of the planar surface are resting on the base as shown in figure 7.** Both edges provide a stable support for the support member from wobbling when changing the location of the support member." (emphasis added)

As noted above, the Examiner suggests that the “supper [sic] member has **four edges**, the two edges on the bottom of the planar surface are resting on the base as shown in figure 7” (emphasis added). It is unclear exactly what the “supper member” is that is being referred to by the Examiner. Nevertheless, for the sake of argument, it will be assumed that the Examiner is referring to one of the **Dumben** “book ends” (17) as illustrated by figure 7 of the **Dumben** reference. However, it should be noted that *Webster’s Encyclopedic Unabridged Dictionary of the English Language*, 2001, Thunder Bay Press, defines “edge” as “**a line or border at which a surface terminates.**” Consequently, as **clearly** illustrated by figure 7, the **Dumben** “book end” (17) has more than four edges.

In fact, it is clear that the bottom section of the **Dumben** “book end” (17) has a center section that extends **into** the base (5) and is in contact with block (16). Clearly, in view of figure 7, the bottom portion of the **Dumben** “book end” (17) has **five** separate planar surfaces, and thus a plurality of “edges.” In particular, from right to left, the **Dumben** “book end” (17) shows: 1) a first flat area above the top of the base (5); 2) a second small area at a right angle to the first area, and extending down into the base; 3) a third flat area at a right angle to the second flat area, and disposed within the slot (8) of the base (5); 4) a fourth small area at a right angle to the third area, and extending from the third area towards the top of the base; and 5) a fifth flat area extending from, and at a right angle to the fourth flat area, above the top of the base (5). Consequently, because just the bottom of the **Dumben** “book end” (17) has five separate planar surfaces connected at right angles, and because the **Dumben** “book end” (17) is a three-dimensional structure, the bottom section of the **Dumben** “book end” (17) has **at least 16 edges**.

Therefore, in view of the above discussion, the Examiner’s statement that “**the two edges on the bottom of the planar surface are resting on the base as shown in figure 7**” is unclear on its face.

However, regardless of the Examiner's apparent misuse of the term "edges," and in contrast to the position advanced by the Examiner, the Appellants again contend that the **Dumben** "book ends" (17) are not in fact disposed on a top surface of the base, as described and claimed by the Appellants. In particular, as clearly illustrated by figures 1, 3, 4, 5, 6 and 7 of the **Dumben** reference, and as repeatedly explained by the Appellants, the pair of "book ends" (17) are **not** disposed on the top surface of the base, as described and claimed by the present invention. In fact, as illustrated by figures 1, 3, 4, 5, 6, and 7, and as explained on page 2, lines 5-22 of the **Dumben** reference, the **Dumben** book ends (17) are actually coupled to and supported by blocks (16) that are slidably mounted within a longitudinal slot (8) in the base (5). These blocks (16) are in turn coupled to guide pieces (12) that are disposed on the **lower surface** of the base (5).

In contrast, at least one of the Appellants support members, 20 and 24, has a "flat planar surface to communicate with base plate 10." Further, "support 24 **lies flat on top of base plate 10...**" (emphasis added) as described on page 6, lines 12-18 of the substitute specification provided as Amendment B. In addition, also unlike the **Dumben** book ends (17), the Appellants support members, 20 and 24, do **not** extend **into** the base as illustrated by figure 7 of the **Dumben** reference.

Therefore, in view of the preceding discussion, it is clear that **Dumben** fails to teach the Appellants claimed "pair of support members **disposed on a top surface of the base**" (emphasis added) as described and claimed by the Appellants.

Next, the examiner suggests that the **Dumben** "support members are slidably engaged (16) with the top surface of the base."

However, in contrast to the position advanced by the Examiner, the Appellants again contend that the **Dumben** reference clearly shows in figures 1 and 3-7 that the book ends (17) are supported by **blocks (16)** which are themselves slidably engaged **within a longitudinal slot (8)** in the base (5), see **Dumben** page 2, lines 5-10. Further,

the **Dumben** blocks (16) are not slidably engaged with the surface of the base (5), as they are clearly disposed within the longitudinal slot (8) in the base as illustrated by figures 4, 5 and 6. In addition, as illustrated by figure 7, a portion of the **Dumben** book ends (17) actually extends *into* the slot (8) in the base (5). Consequently, it is clear that the **Dumben** book ends (17) are coupled to “slidable blocks” (16) which are in turn ***slidably disposed within a slot (8) in the base (5)***. In contrast, at least one support of the present invention is clearly ***“slidably engaged with the top surface of the base,”*** and **not** within a slot within the base as described by **Dumben**.

Next, the examiner suggests that **Dumben** teaches that a “securing apparatus (12, 19) is capable of releasably securing the support members” (emphasis added). Further, in the Office Action dated November 19, 2002, the examiner responded to the Appellants arguments filed on September 3, 2002 by stating:

“on pages 9-11, the applicant argues that Dumben screws 19 do not prevent relative motion between the base and the book ends. The screw (19) in Dumben’s invention shows that the screw keeps the bookends within the base when changing the location of the book ends. ***The bookends would not slide out of the base when moving the ends. The examiner believes that if the screw (19) are screwed tighten against the sliding block (12), it would prevent the book ends from sliding.***” (emphasis added)

As noted above, the Examiner states that **Dumben** teaches that a “securing apparatus (12, 19) is capable of releasably securing the support members (17),” However, as explained by the Appellants in the prior Appeal Briefs filed September 3, 2002, and July 12, 2003, it is clear from a reading of the **Dumben** reference that elements (19) of **Dumben** are actually screws which are “employed for securing the slidable blocks 16 and the slidable floating member 12 to the bracing members 18 which may be secured to the book end supports 17...” (See **Dumben** page 2, lines 15-

18). Clearly, the **Dumben** screws are **not** used in the manner suggested by the Office Action.

In particular, the **Dumben** screws (19) simply hold together elements that are slidably disposed within and under the slot (8). Further, while it appears that such screws releasably secure the slidable blocks (16) and the slidable floating member (12) to the bracing members (18), it should be noted that apparent effect of removing these screws (19) would be to cause each bracing member (18) to become unsecured from its support structure, thereby reducing any lateral support of the book ends (17). Clearly, the **Dumben** screws (19) do not operate as suggested by the Office Action, as they simply do **not** prevent relative motion between the base (5) and the book ends (17). Further, as clearly illustrated by figures 4, 5 and 6, the **Dumben** screws (19) already appear to be tightened as much as they can be without the heads of those screws actually extending **into** the surface of the slidable floating member (12). Thus, the Appellants strongly disagree with the Examiner's suggestion that tightening the **Dumben** screws (19) "**would prevent the book ends from sliding.**" (emphasis added).

In stark contrast, as claimed by independent claim 92, the Appellants describe a "first securing apparatus capable of releasably securing the support member to the base **so as to prevent relative motion between that member and the base**" (emphasis added). The Appellants securing apparatus prevents **any** relative motion between the support member and the base, while the **Dumben** screws (19) in combination with the **Dumben** slidable floating member (12) serve only to provide a support structure for the **Dumben** book ends (17) as described above. Clearly, the **Dumben** reference does not teach the Appellants first securing apparatus.

In addition, with respect to claim 92, the Examiner also suggests that "[t]he stand comprises a **first securing apparatus 19 capable of releasably securing the support member to the base so as to prevent relative motion between the member and the base**, and a **second securing member** (the other support member,



17, is a securing member for supporting an item when the single member is pressing against the item from the other side) ***for attaching the support member to an item placed against the planar holding face of the support member.***” (emphasis added)

However, as discussed above, the Examiner is again incorrect in his interpretation of the function of the ***Dumben*** screw (19). In fact, as discussed above, screw (19) actually serves to secure the slidable block (12) to the support brace (18). Clearly, as discussed above, and in stark contrast to the position advanced by the Examiner, the ***Dumben*** screw (19) is ***incapable*** of “releasably securing the support member to the base so as to prevent relative motion between the member and the base.”

Further, the Appellants strongly disagree with the Examiner’s characterization of the second of the two ***Dumben*** bookends (17) as being a “securing member... for ***attaching the support member to an item*** placed against the planar holding face of the support member” (emphasis added), as described and claimed by the Appellants. The Examiner offers the explanation that “the other support member, 17, is a securing member for supporting an item when the single member is pressing against the item from the other side” as evidence that the ***Dumben*** bookend (17) is capable of being **attached** to an item being held between the bookends. However, the Appellant’s respectfully suggest that the ***Dumben*** reference in fact provides no mechanism, teaching, or suggestion for actually **attaching** an item being held between the bookends (17) to one of those bookends. In fact, the Appellants respectfully suggest that the Examiner’s argument with respect to this issue has no support whatsoever in view of the plain meaning of the ***Dumben*** reference.

Therefore, in view of the foregoing argument, it is the Appellant’s position that rejected independent claim 92, and dependent claim 93, are not described by the ***Dumben*** reference, and as such are patentable under 35 U.S.C. §102(b). The basis for this patentability is the nonobvious language of independent claim 92, i.e.,

Claim 92: A support stand, comprising:

**"a flat, planar, rigid base;**

a single support member ***disposed on a top surface of the base...***

***slidably engaged with the top surface of the base*** having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base, and wherein the support member is slidably engaged with the top surface of the base such that the holding surface of the support member can be slid inward or outward on the base;

***a first securing apparatus capable of releasably securing the support member to the base so as to prevent relative motion between that member and the base;*** and

***a second securing apparatus for attaching the support member to an item placed against the planar holding face of the support member, so as to hold the item in an upright position."*** (emphasis added)

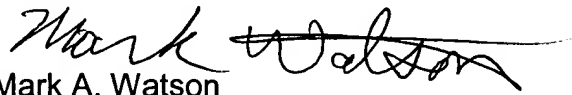
As such, the Appellants respectfully traverse the Examiner's rejection of the claims of **Group V**, i.e., independent claim 92, and dependent claim 93, under 35 U.S.C. §102(b) in view of the ***Dumben*** reference.

### **SUMMARY**

For the foregoing reasons, it is submitted that the Examiner's rejection of Claims 75-77, 81-82, and 86-93 was erroneous. As such, reversal of the Examiner's decision is respectfully requested.

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Respectfully submitted,

  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of:	:	Group Art Unit: 3632
Holland et al.	:	
	:	Examiner: A. Wujciak
Entitled: SUPPORT STAND FOR HOLDING DISPLAY ITEMS	:	
	:	
Serial No.: 08/992,504	:	
	:	
Filing Date: December 17, 1997	:	

**APPEAL BRIEF APPENDIX**

The following Claims 75-77, 81-82, and 86-93 represent all the claims involved in the Appeal of the above-identified application and are provided in accordance with the requirements of 37 CFR 1.192(c)(7). Pending claims 78-80, 83-85, and 94 have been objected to as being dependent upon a rejected claim base, and have not been included in this following claim listing per request by the Examiner as they have not been rejected on any statutory basis.

Claim 75. A support stand, comprising:

a flat, planar, rigid base;

a pair of support members disposed on a top surface of the base, each support member having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base and opposed to each other, and wherein a first of the pair of support members is slidably engaged with the top surface of the base

such that the holding surface of the first support member can be slid toward or away from the holding surface of the second support member; and

a securing apparatus capable of releasably securing the first support member to the base so as to prevent relative motion between that member and the base.

Claim 76. The support stand of Claim 75, wherein the second support member is permanently affixed to the base.

Claim 77. The support stand of Claim 75, wherein the first support member comprises an L-shaped bracket, a first leg of which extends substantially perpendicular to the base and has a face which forms the planar holding surface of the first support member, and a second leg of which has a face which is slidably engaged with the top surface of the base.

Claim 81. The support stand of Claim 75, wherein the second support member is also slidably engaged with the top surface of the base such that the holding surface of the second support member can be slid toward or away from the holding surface of the first support member, and wherein the support stand further comprises a second securing apparatus capable of releasably securing the second support member to the base so as to prevent relative motion between the second member and the base.

Claim 82. The support stand of Claim 81, wherein the second support member comprises an L-shaped bracket, a first leg of which extends substantially perpendicular to the base and has a face which forms the planar holding surface of the second support

member, and a second leg of which has a face which is slidably engaged with the top surface of the base.

Claim 86. The support stand of Claim 75, wherein the base has a bottom surface which is in contact with the ground or floor, and wherein the base is of sufficient size and shape so that whenever a display item is held in an upright position between the planar holding surfaces of the support members, it is prevented from tipping over.

Claim 87. The support stand of Claim 86, wherein the top and bottom surfaces of the base have an elongated rectangular-shape and a longitudinal axis which extends substantially perpendicular to the planar holding surfaces of the support members.

Claim 88. The support stand of Claim 86, wherein the top and bottom surfaces of the base have a substantially square shape.

Claim 89 The support stand of Claim 75, further comprising at least two wheels, each of which is attached to a bottom surface of the base, so as to allow the support stand to be rolled about.

Claim 90. The support stand of Claim 75, wherein the base is made of metal and coated with a rust-resistant plating material.

Claim 91. The support stand of Claim 75, wherein each support member is made of metal and coated with a rust-resistant plating material.

Claim 92. A support stand, comprising:

a flat, planar, rigid base;

a single support member disposed on a top surface of the base having a single, planar holding surface oriented so as to be substantially perpendicular to the top surface of the base, and wherein the support member is slidably engaged with the top surface of the base such that the holding surface of the support member can be slid inward or outward on the base;

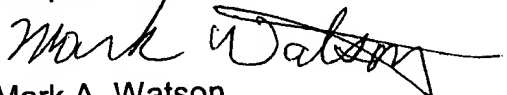
a first securing apparatus capable of releasably securing the support member to the base so as to prevent relative motion between that member and the base; and

a second securing apparatus for attaching the support member to an item placed against the planar holding face of the support member, so as to hold the item in an upright position.

Claim 93. The support stand of Claim 92, wherein the support member comprises an L-shaped bracket, a first leg of which extends substantially perpendicular to the base and has a face which forms the planar holding surface of the support member, and a second leg of which has a face that is slidably engaged with the top surface of the base.

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